

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-183614

DATE: January 14, 1976 099 ~~136~~

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MATTER OF: Digital Equipment Corporation

DIGEST:

1. Listing total point value of each desirable feature of mini-computer central processing unit satisfies requirement that RFP disclose relative value of desirable features, even when there is no indication that superiority of desirable feature will be weighed over stated minimum in distributing total possible points, since all of definitive evaluation factors were disclosed which formed judgmental basis for award.
2. Protest against reopening of negotiations and calling for new best and final offers in procurement for mini-computers, filed with GAO almost 2 months after denial of similar protest to agency, is untimely under 4 C.F.R. § 20.2(a) (1974) and not for consideration on merits.
3. GAO will not substitute its opinion as to technical acceptability of proposed mini-computer, particularly where item successfully passed benchmark test designed to demonstrate technical capability to meet specifications, which GAO views as strong evidence of capability to perform.
4. Where method of expanding mini-computer capabilities in field is not limited by terms of RFP, proposal offering low-end chassis with upgraded plug-in modules is acceptable as long as expansion can take place in field and RFP requirements are met.
5. Offeror is not justified in relying upon agency's oral statements before award allegedly restricting range of computer offered when RFP disclaims applicability of such advice, inquiry and response were not reduced to writing as required by RFP and offeror failed to submit permissible alternate proposal.

This decision concerns request for proposals (RFP) No. CDPA-74-28, for a fixed-price, indefinite quantity contract for automatic data processing equipment (ADPE) (mini-computers)

conducted by the General Services Administration (GSA) for the National Bureau of Standards (NBS), and the National Oceanic and Atmospheric Administration (NOAA).

The RFP called for offers on seven items of ADPE and related services. This protest concerns only item 1 - the central processing unit (CPU). The RFP permitted proposals on any one or combination of items. The RFP also cautioned that more than one award was contemplated. The scheme for evaluating proposals was found in section H.2 of the RFP. For each item, the RFP listed the maximum number of units contemplated to be ordered. Also given were minimum orders, where known, as well as estimated quantities of items under corresponding probability of purchase percentages. Blanks were inserted in the RFP for each item to be priced based upon Government information as to the boundaries of purchase probability level, stated in terms of the number of items delivered since inception of the contract, total number of units within the purchase probability level, and purchase probability.

Subsection H.2.1.3 states that "[T]he evaluation of the total system price will be the sum of all item prices for items required in a complete system. The evaluation of the total system price will be computed for each combination of proposals that can make a complete system." Subsection H.2.1.4 provides: "[A]ll desirable features will be evaluated on a point basis as set forth below: * * *." The total possible number of points assigned the CPU was 465. Next to each of the 32 desirable features described in section F of the RFP (the specifications) was listed its point value. Subsection H.3.1 provided the formula pursuant to which award would be made.

Fifteen proposals were submitted by the closing date for receipt of proposals, September 30, 1974. Discussions were thereafter conducted with those firms determined to be in the competitive range. A contract for item one was awarded to C3, Incorporated (C3), on March 10, 1975, predicated on supplying a CPU manufactured by Interdata, Inc.

The Digital Equipment Corporation (DEC) filed its protest against this contract with GAO on April 7, 1975. It is alleged that the computer offered by C3--Interdata 7/16--is not capable of meeting all of the specification requirements. In this regard, it is alleged that the 7/16 does not have sufficient expansion capability to meet the requirements (expandable past 32K words of main memory), and is not expandable with the addition of a floating point processor or memory management unit. It is DEC's position

that utilizing Interdata's 7/32 stretch option module also does not meet the mandatory specifications because the 7/32 becomes operative by removing the old 7/16 processor boards and replacing them with new processor boards. This process is likened to creating a new, and different computer.

This facet of the expansion capability raises two ancillary matters. The first allegation is that GSA provided different, conflicting information to different competitors. DEC alleges that during a visit to its facilities by GSA, DEC asked whether it could submit its proposal on the basis of using a low-end CPU chassis with expansion capabilities capable of satisfying the specifications. DEC maintains that this approach was prohibited by GSA's oral response, which was not subsequently reduced to writing. Another aspect of this verbal interchange claimed by DEC is a competitive one. DEC maintains that it is less costly to compete on the basis of using a low-end upgradeable CPU. DEC states that its low-end model, the PDP 11/10, which is upward compatible with its 11/40 and 11/45, would have permitted significant cost reductions. Since C3 alone competed on this basis, it is alleged that C3 had a competitive advantage.

DEC further alleges that GSA improperly withheld evaluation criteria relative to desirables. That is, DEC believes that the evaluation criteria stated in the RFP did not impart the full basis of evaluation as required by Federal Property Management Regulations (FPMR), 41 C.F.R. § 101-32.408-6 (1974). As an example, DEC notes that the RFP indicated that a possible eight points could be achieved for increased speed beyond a certain level and it interpreted that to mean that if speed were increased past a threshold level all eight points were awarded. DEC believes, however, that increased speed by a certain percentage got the proposer a commensurate fraction of the eight points. In this connection, DEC contends that GSA was required to state any subcriteria which would affect the manner in which its offer was prepared and evaluated.

Finally, DEC protests the manner in which negotiations were conducted and terminated. After initial discussions had been conducted with those offerors in the competitive range, closing date for the receipt of best and final offerors was set at December 20, 1974. DEC states that while its proposal was timely submitted, it believes that there were offers received after the date and time established as the cut-off: DEC maintains that the late proposals should have been rejected pursuant to the "Late Proposals" clause in the RFP. DEC views GSA's subsequent reopening of negotiations and call for new best and final offers by January 22, 1975, as prejudicial to those offerors who submitted timely proposals.

DEC maintains that GSA's decision to reopen negotiations, at the least, appears to compromise the integrity of the competitive negotiation system, permit the strong possibility of a price leak and render the procurement akin to an auction.

GSA has responded to DEC's contentions. Initially, GSA maintains that DEC's protest to the General Accounting Office (GAO) on April 7, 1975, concerning the manner in which discussions were terminated and reopened is untimely under our Interim Bid Protest Procedures and Standards (4 C.F.R. § 20 (1974)), then in effect. Section 20.2(a) required that any protest to GAO after a protest has been initially filed with the procuring activity must be filed with GAO within 5 days of notification of adverse agency action to be considered. GSA notes that on January 21, 1975, DEC protested to GSA its "effort for second best and final offers * * *." On February 4, 1975, GSA denied DEC's protest. Award of the contract was made on March 10, 1975. Under these circumstances we agree that DEC's protest on this point, filed well after the required 5-day period, is untimely and will not be considered on its merits.

DEC alleges in the alternative that this aspect of the protest raises an issue significant to procurement law within the meaning of section 20.2(c), and may therefore be considered on its merits. We have defined "significant issues" to be those that present questions of widespread procurement interest. MB Associates, B-184564, September 24, 1975, 75-2 CPD 181. In our opinion, this issue does not contain the requisite level of widespread procurement interest and is not significant.

DEC also raises the spectre that adequate competition was not generated by this procurement. DEC infers from this alleged lack of competition in a very competitive field that the specifications were written so that maximum competition would not be available. This contention is also untimely under section 20.2(a) of our Procedures since the field of competition became public knowledge on the date of contract award, March 10, 1975, and DEC's protest was not filed until April 7, 1975, more than 5 days after the date the basis for protest should have been known.

The next issue concerns whether the statement of evaluation criteria in the RFP was sufficient under the FPMR, 41 C.F.R. chapter 101, subpart 32 (1974), which sets forth the policy, procedures, and guidelines pertaining to Government-wide management of automated data services, including procurement and contracting. Subpart 101-32.4 governs the procurement of all ADPE. FPMR § 101-23.408-6 provides:

"To enable an offeror to prepare a proposal or quotation properly, the solicitation shall identify all the evaluation factors which are to be considered. In addition to mandatory requirements, desirable features shall be included where applicable. When desirable features are included in a solicitation, relative weights, expressed in dollar value, or points, or any other reasonable indicator which will describe the relative importance of the desirable features shall be assigned to each desirable feature."

DEC claims that it learned at its debriefing that "subsets" of criteria not stated in the RFP or otherwise announced to the competitors were applied in the evaluation. DEC has cited many decisions of our Office for the proposition that offerors should be informed of all the evaluation factors and the relative weight of each factor. Also, DEC notes that we have held that it is improper to use evaluation factors not revealed to all offerors. B-174492, June 1, 1972.

GSA maintains that the evaluation criteria were adequately set forth in the RFP. Section H.2.1.4 stated that "All desirables will be evaluated on a point basis as set forth below:". Thereafter, 32 separate desirable features were listed for item 1. A point value was assigned each feature, totalling 465 points. For example, item F.2.5.4, General Purpose I/O Board was assigned 50 points; item 5.2.4.1, Memory Size and Speed was worth 8 points; etc. The item number refers to a specification in section F of the RFP. Thus, item F.2.4.1 mandatory features requires each system to have "* * * a minimum of 16384-16 bit (or more) words expandable in the field to 64K words. It shall have a full cycle time of 1 microsecond or less." The desirable features listed stated "Points for higher speeds or larger size." While the Memory Size and Speed is only one of 32 possible examples, we believe it is representative of the basic problems.

In our view, the evaluation criteria as stated in the RFP complied with the applicable FPMR, quoted above, and decisions of our Office. The requirement that all evaluation criteria must be stated in the RFP and their relative importance denominated is necessary to insure that all offerors compete equally for Government contracts. BDM Services Company, B-180245, May 9, 1974, 74-1 CPD 237. Within this framework, we have excluded from this principle subcriteria that simply define the major evaluation

factors which form the judgmental bases for award. AEL Service Corporation, et. al. 53 Comp. Gen. 800 (1974), 74-1 CPD 217. Moreover, we do not believe that an offeror would be justified in assuming that offering the minimum desirable feature would be accorded equal weight with an offer proposing to furnish desirables substantially in excess of the stated minimum. Such an interpretation misses the basic nature of a request for desirable features. See 53 id., supra. When the RFP indicates that speed beyond a minimum level is desirable, it is reasonable to believe that greater speeds will be accorded greater weight. All of the definitive desirable features were listed in the RFP and their relative importance denominated by point total. In our view, this satisfies the FPMR and decisions of our Office.

The next basis of protest concerns GSA's determination that the mini-computer offered by C3 (the Interdata 7/16) would meet all of the requirements stated in the RFP. To iterate, DEC maintains that the 7/16 is not expandable past 32K words of main memory; is not expandable with the addition of a floating point processor; and is not expandable by the addition of a memory management unit.

GSA's response to this contention is:

"It was specifically stated in F.2.4.1.A. of the RFP that each system shall have a minimum of 16384-16 bit (or more) words expandable in the field to 64K words. A functional demonstration of the Interdata equipment proposed by C3 was observed by NBS personnel during a site visit to the Interdata factory at Oceanport, N.J. on October 23, 1974. At that time, benchmark programs specifically designed to test the functional capability of the equipment to meet the specifications of the RFP were successfully performed.

"It was determined by the technical evaluation team at NBS that the proposal of C3 was fully responsive to the solicitation. The expansion of the Interdata Model 7/16 Computer can be accomplished in the field by installing part number CM71-109, a plug-in module known as a 'stretch/32 option'. Similarly, part number CM71-106 is used to provide field expansion for the addition of a floating point processor. When you add the above parts to the 7/16 you expand the 7/16 to a 7/32 which is capable of addressing 64K words. (See Items 1H and 1L on pp. I-11 and I-12 of Enclosure 5) That the above can be performed is acknowledged

by DEC when they state that the expansion capability is accomplished by 'removing the 7/16 processor boards and replacing them with 7/32 boards.' (See para. 1, p. 2 of Enclosure 2) There was no limitation in the RFP concerning the method by which field expansion of the system was to be accomplished. The technical evaluation team also determined that a program using any of the languages requested in Section F of the RFP could run, without modification, on either the 7/16 or the expanded 7/16."

We have long recognized the broad discretion afforded the procuring activity to draft specifications that reflect its minimum needs. We also generally accede to the technical determinations of the procuring activity when deciding what equipment will satisfy its stated minimum needs. Data 100 Corporation, B-182397, February 12, 1975, 75-1 CPD 89. One of the methods by which such a determination can be made, particularly when procuring computers, is to run benchmark programs designed to demonstrate the capability of offered equipment. Successful execution of such a benchmark is strong evidence that the equipment is capable of performing the desired functions. Cf. Computer Network Corporation, B-183639, November 12, 1975, 55 Comp. Gen. ___, 75-2 CPD 297; Information Consultants, Incorporated, B-183532, August 8, 1975, 75-2 CPD 96. In light of GSA's representation that a functional demonstration was successfully completed by Interdata utilizing the mini-computer offered by C3, we would not be warranted in reaching a contrary opinion on the basis of the present record. We take a similar view of DEC's other allegations concerning expandability - i.e. upwards compatible language, capability to address 64K words, addition of a floating point processor via part number CM71-109.

An ancillary issue is raised regarding expandability--whether utilizing the stretch 7/32 option to provide field expandability capable of addressing 64K words changed the basic nature of the machine offered. DEC's contention is basically that the 7/32 module is not merely an add-on to an already existing compliant piece of hardware, but is rather a new CPU. The change is implemented by removing the 7/16 processor boards and replacing them with 7/32 processor boards. Permitting this approach, when such permission was reportedly denied to DEC, is alleged to have given C3 a competitive price advantage because using a low-end chassis with upgraded plug-in modules is cheaper than having to utilize

a basically more sophisticated and more expensive chassis. Lastly, DEC notes that Interdata's price list states that "[W]hen field expanding the Model 7/16 processor with a * * * stretch 32 module (M71-109), certain equipment is required to be returned to Oceanport. (Interdata's headquarters)." DEC reasons, therefore, that the 7/16 cannot be considered "field expandable" if certain of the equipment must be returned to the manufacturer to afford the expanded capability.

Interdata has responded to this contention. Interdata states that the installation of the 7/32 stretch option can be "* * * readily accomplished in the field * * *." Further Interdata states that:

"The upgrade is, in fact, a simple modular field expansion. The reference in our price list to the return of some equipment is not a requirement to enable expansion. The return of such equipment is an implicit credit to facilitate our ability to offer the expansion at the listed price."

GSA takes the position that the RFP did not limit the processes by which expansion could be effected in the field. Thus, the use of plug-in modules, even the processor boards, is acceptable.

First, it appears that DEC's oral inquiry concerning the acceptability of a low-end unit was never reduced to writing, nor was the GSA response. Section I.3 of the RFP required:

"Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, * * * must be requested in writing * * *. Oral explanations or instructions given before the award of a contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished to all prospective offerors as an amendment of the solicitation, if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be prejudicial to uninformed offerors."

C3 has stated that it received no additional information from GSA beyond that stated in the RFP. At a conference held at our Office, GSA stated that it did not restrict DEC's choice of equipment, but stated only that whatever equipment was offered had to meet all of the specifications.

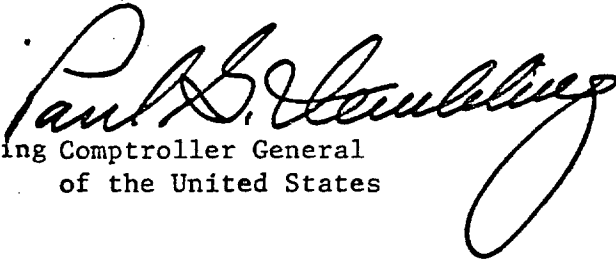
It is the responsibility of the offeror to determine whether the equipment upon which the offeror intends to submit its offer meets the specification. Computer Network Corporation, supra. The technical acceptability from the Government's standpoint is determined only after offers have been submitted. Thus, DEC was not justified in submitting its proposal for the high-end machine on the basis of reliance on oral statements made before award. Furthermore, section II-3 permitted offerors to submit alternative proposals. Any doubt DEC had as to the viability of submitting a proposal on its low-end unit could have been resolved by either submitting an alternate proposal or submitting a written question as to the acceptability of such an approach. Therefore, we do not see that C3 gained an unfair competitive advantage by submitting its proposal on the basis of the 7/16 with the 7/32 option, as a similar method was open to all competitors.

We think it unnecessary to resolve the question whether using the 7/32 option changes the basic character of the CPU from a technical standpoint. The specifications themselves contemplated that certain modifications would possibly have to be performed on the machine in the field. This is implicit in the use of the term "field expandability." Obviously, the need to be capable of expanding from 32K to 64K words implies that certain changes may be required to the basic machine - not that the basic machine as proposed must be capable initially of satisfying all prospective requirements. As we read the RFP, there is nothing that prohibits the method of satisfying the specification proposed by C3. Whether the basic nature of the CPU offered by C3 changes with the addition of the 7/32 option is irrelevant. Rather, the salient inquiry is whether the unit proposed, including permissible options, satisfies the Government's needs as reflected in the specifications. As we stated previously, GSA has determined that the proposal meets its needs.

Finally, DEC requests that GAO participate in a conference designed to formulate Government-wide policy for the procurement of mini-computers more agreeable to industry and Government. The broad overseeing of the formulation of procurement policy for ADPE is entrusted to GSA by the provisions of 40 U.S.C. § 759 (1970) (Brooks Act). Thus, GAO is not a principal party to the formulation of procurement policy for the Executive branches in this area. PRC Computer Center, Inc., et. al., 55 Comp. Gen. 60, 75-2 CPD 35. GSA has discharged this responsibility with the issuance of 41 C.F.R. subpart 101-32.4 (1974) (FPMR).

B-183614

For the above reasons, the protest is denied.


Acting Comptroller General
of the United States